

IC 29-2-5

Chapter 5. Administration of Estate of Intestate Absentee

IC 29-2-5-1

Five years absence; presumption of death

Sec. 1. (a) When any resident of Indiana is absent from the individual's usual place of residence and gone to parts unknown for a period of five (5) years, without having made any sufficient provision for the care and management of the individual's property, real or personal, and the court having probate jurisdiction in the county where the individual last resided or where the property is situated determines that:

- (1) the individual's property is suffering waste for want of proper care; or
- (2) the family of the individual is in need of the use and proceeds of the property for support or education (or that the sale of the property, or part thereof, is necessary for the payment of the individual's debts);

it shall be presumed and taken by the court that the individual is dead. The court has jurisdiction over the estate of the individual in the same manner and to the same extent as if the individual were dead. The court shall appoint an administrator of the individual's estate, who shall have all of the powers and rights over the estate and be subject to all of the liabilities and duties that appertain to administrators of decedents' estates.

(b) Before the court may determine that an individual should be presumed dead, notice to the individual must be published for thirty (30) days in a newspaper of general circulation in:

- (1) the county where the individual last resided or where the individual's property is located; and
- (2) the state capital.

(c) The will of an individual who is presumed dead under this section is admissible to probate under IC 29-1 and shall be probated as the will of a deceased individual.

(Formerly: Acts 1859, c.4, s.1; Acts 1861, c.52, s.1; Acts 1911, c.285, s.1.) As amended by P.L.263-1989, SEC.2.

IC 29-2-5-2

Discharge of administrator; return of absentee

Sec. 2. Such administrator shall not be discharged on the return and reappearance of such person until discharged by the court, but shall retain his powers and rights and be subject to all his official liabilities and duties until so discharged.

(Formerly: Acts 1859, c.4, s.2.)

IC 29-2-5-3

Repealed

(Repealed by Acts 1975, P.L.289, SEC.3.)

IC 29-2-5-4

Guardians; appointment

Sec. 4. Such court shall have power to appoint guardians of the persons and estates of the children under eighteen (18) years of age of such departed person, who shall have all the powers and rights, and be subject to all the duties and liabilities, in relation to such children and their estates, which appertain to guardians of heirs under eighteen (18) years of age and their estates, under IC 34-9-2.

(Formerly: Acts 1859, c.4, s.4; Acts 1973, P.L.287, SEC.13.) As amended by P.L.1-1998, SEC.157.

IC 29-2-5-5

Distribution of estates; bond; trustee

Sec. 5. (a) The property of such departed person, real and personal, and all his rights, obligations and choses in action, shall be subject to the same liabilities, incidents, rights, management and disposal under this chapter, in all respects, as if such person were known to be deceased; and all adjudications and acts done by such administrator or guardian shall be valid, effectual and binding on such person should he return, as if they were his own acts, the acts and doings of such administrator and guardian being in good faith and without fraud.

(b) Before any distribution of the estate of such absentee shall be made to the person or persons entitled to receive it, he or they shall give security, to the approval of the proper circuit or superior court or probate court of the county having jurisdiction thereof, in such sum as the court shall direct, and conditioned that if the absentee shall, in fact, be at the time alive, he or they will, respectively, refund the amounts received by each, on demand, with interest; said bond to run and be in force for the period of three (3) years from the date of the issuing of letters of administration by said court, and if, during said period of three (3) years, the absentee shall not appear and demand said estate, the rights of the absentee thereto shall be barred; but if the person or persons entitled to receive the same is or are unable to give the security aforesaid, then the court shall appoint a trustee, who shall give bond for the faithful performance of his duties in one and one-half times the amount of such money, with sufficient sureties, who shall invest said money at interest as the court may direct, which interest is to be paid annually to the person or persons entitled to it, and the money to remain at interest until the security aforesaid is given, and if the absentee does not appear and demand said money within said period of three (3) years, the court shall order it to be paid to the person or persons entitled to it absolutely.

(c) The provisions of this section shall apply to all pending and future administrations of such estates of absentees.

(Formerly: Acts 1859, c.4, s.5; Acts 1913, c.326, s.1.) As amended by Acts 1982, P.L.171, SEC.70.